



Reference Checks – How to Manage the Risk *By Lauraine Bifulco*

Reference checks are one of the stickiest labor law issues business owners face. When hiring employees, you should get accurate and thorough information about an applicant, but as an employer who gives out this information on current or former workers, you can potentially be found liable for claims of defamation of character or invasion of privacy rights. Due to recent legislation in California, providing truthful, job-related information is protected. However, you still need to be careful. Here are some tips to help you avoid problems:

Be Consistent

Although you may be happy to give a reference to a “good” worker, you have to treat all former employees equally. Establish a company policy, publish it in your employee handbook, and train your staff on who is authorized to give out references.

Tell the Truth

Providing honest, accurate, job-relevant information is always

the best policy and the best defense. However, due to the legal issues involved, many companies develop a policy of only verifying dates of employment, position held, wages at the time of termination, and sometimes a statement as to eligibility for rehire. If you do adopt such a policy, be cautious about an employee who was violent or dangerous. Failure to provide this information to a potential employer can create liability for you if that person goes on to hurt others. In such a circumstance, you should consult with an attorney and proceed with great caution.

Signed Releases

Consider drafting a release document for terminating employees to sign that specifically authorizes you to release employment information to future employers. Likewise, adopt release language into your job application and/or other hiring documents to give you permission to check references on your applicants.

Who’s Asking?

When someone calls to ask for reference information on a former or current employee, don’t provide information verbally. First of all, you can’t be sure of the identity of the person calling. Ask him/her to mail or fax you a form to complete and information that identifies their business and includes a release signed by the employee. Often the person will complain about this slowing down their process – especially when it’s a financial institution and they claim they’re in a big hurry to fund a loan - but they almost always have all of this on hand and will fax it to you very quickly.

Avoid the phone

Respond to all reference and employment checks in writing. In the event of a future problem, there will be a clear record of what information was communicated. Additionally, putting it in writing will help you reflect on the wording and accuracy of what you say. Be careful if faxing the information back to the person who requested it. Make sure it’s a

confidential fax number or consider sending it by mail marked “confidential.”

that they’re reviewed before being sent, that the information provided does not violate company policy, and that a copy is kept on file.

Letters of Recommendation

Think about the same issues we’ve just discussed. If you’re even going to allow supervisors and managers to write these letters, make sure you require

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